INTERMOUNTAIN EXPLORATION COMPANY

IBLA 77-284 Decided September 13, 1977

Appeal from decision of Utah State Office, Bureau of Land Management (U-942), rejecting application for modification of coal lease SL 050641.

Set aside and remanded.

1. Coal Leases and Permits: Leases

> Where an application to amend a coal lease describes 480 acres, a permissible acreage when the application was filed, but the pertinent statute and the regulations in 43 CFR 3524.2-1(a) are amended to provide for modifications of existing coal leases including contiguous coal lands if the total area of such modifications does not exceed 160 acres or the same number of acres as that in the original lease, whichever is less, the application for 480 acres cannot be allowed, but the applicant will be given an opportunity to amend his application so as to cover no more than 160 acres.

APPEARANCES: H. Byron Mock, Esq., Mock, Shearer and Carling, Salt Lake City, for appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Intermountain Exploration Company has appealed from a decision of the Utah State Office, Bureau of Land Management, dated March 8, 1977, rejecting its amended application for modification of its coal lease, SL 050641.

Intermountain originally filed a request for modification of its lease August 6, 1973, asking for an extension to include an additional 2,364.40 acres to its lease. That application was rejected by the Bureau of Land Management February 15, 1974, and

affirmed by this Board in Intermountain Exploration Company, 17 IBLA 261 (1974). In our first consideration of appellant's application we found that the application failed to meet the requirements of section 3 of the Mineral Leasing Act (30 U.S.C. § 203 (1970)) for modification, since the lands applied for could be developed independently and there was competitive interest in the applied-for lands.

On November 12, 1974, appellant filed an amended application for modification of its existing 160-acre coal lease to include a much smaller area of 480 acres, described as the SW 1/4 sec. 25 and the E 1/2 sec. 26, T. 14 S., R. 6 E., S.L.M., Utah. The BLM informed appellant that on August 4, 1976, the Federal Coal Leasing Amendments Act of 1975 became law and that section 13 of that Act limits coal lease modifications to a maximum of 160 acres in addition to an original lease. Citing the revisions of the Regulations in 43 CFR 3524.2-1(a) as of January 25, 1977 (42 F. R. 4453), the BLM completely rejected appellant's amended application because the applied-for land exceeded the new legal limits for modification.

Appellant states in its appeal:

> (1) [T]hat it is in the interest of the United States to add additional acreage to the Lease so as to make it an economic sized unit for mining; and (2) that the BLM can approve the application of 1977 for less than the total originally applied for; and (3) such approval of up to 160 additional acres should be acted upon without new filings and proceedings being required.

As the State Office has correctly indicated, while appellant's amended application was pending before the BLM the Federal Coal Leasing Amendments Act of 1975 (FCLAA), 90 Stat. 1083, 30 U.S.C. § 181, note (Supp. 197), and implementing regulations, came into effect. Section 13(b) of FCLAA, 90 Stat. 1090, 30 U.S.C. § 204, note (Supp. 197), amended the controlling statute to limit coal lease modifications to a maximum of 160 acres. The governing regulations in 43 CFR 3524.2-1 conforming to the requirements of FCLAA, now provide the guidelines for obtaining a modification as follows:

> (a) Application. A lessee may obtain modification of his lease to include coal lands or coal deposits contiguous to those embraced in his lease if the authorized officer determines that it would be in the interest of the United States to do so. In no event shall the total area added by such modifications to an existing coal lease exceed one hundred sixty acres or the same number

> of acres as that in the original lease, whichever is less. The lessee shall file his application for modification in duplicate in the proper land office, describing the additional lands desired, and the needs and reasons for and the advantage to the lessee of such modification.
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> (b) Availability--(1) Noncompetitive. Upon determination by the authorized officer that the modification is justified and that the interest of the United States is protected, the lease will be modified without competitive bidding to include such part of the land or deposits as he shall prescribe.
>
> (2) Competitive. If it is determined that the additional lands or deposits can be developed as part of an independent operation or that there is a competitive interest in them, they will be offered as provided in Subpart 3520.
>
> (c) Terms and conditions. The authorized officer shall require changes in the terms and conditions of the original lease to make them consistent with the modified lease. Before a lease is modified under paragraph (a) or (b) of this section, the lessee shall file his written acceptance of the conditions imposed in the modified lease and the written consent of the surety under the bond covering the original lease to the modification of the lease and to extension of the bond to cover the additional land.

It is certainly clear that a modification of this lease cannot be granted for more than 160 acres. Gulf Oil Corporation, 32 IBLA 13 (1977) (IBLA 77-282, August 29, 1977). Appellant has indicated that it is willing to accept less than the acreage originally applied for up to 160 acres. However, it does not specifically describe which 160 acres it would select out of the original 480 acres applied for. The State Office should not properly bear the burden of choosing which parcel appellant should describe in its amended application.

From our review of the record we can find no statement by the BLM, the Geological Survey, or the Forest Service that the modification in question would not be in the interest of the United States. 1/

1/ By memoranda of November 26, 1974, and May 14, 1976, the BLM requested the recommendations of the Geological Survey on this application. There is no response to these inquiries in the record.

There also appears no stated policy determination to refuse any modification of this lease within the allowable limitations of 160 acres. We do note that there does appear some competitive interest in a portion of the applied-for land within the SW 1/4 of section 25 where a competitive coal lease application (U-34046) conflicts with appellant's request for modification.

Since, at this juncture the record does not contain sufficient adverse information which on its face would further prohibit appellant from filing an amended selection of a modification within the 160-acre limitation, we are returning this case to the State Office to give appellant 30 days to so amend its application to further designate its 160 acres of interest. Upon a timely filing of modification, the case will be processed in accordance with the guidelines of the governing regulations.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Utah State Office is set aside and the case is remanded for further action consistent herewith.

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Martin Ritvo
Administrative Judge

We concur:

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Douglas E. Henriques
Administrative Judge

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Anne Poindexter Lewis
Administrative Judge